



Town of Wilton

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August 12, 2013

U.S. Environmental Protection Agency
5 Post Office Square – Suite 100
Mail Code-OEP06-4
Boston, MA. 02109-3912

Attn: Mr. Newton Tedder

RE: 2013 Draft MS4 NPDES Permit Comments

Dear Mr. Tedder,

On Behalf of the Town of Wilton please accept our comments regarding the 2013 Draft MS4 NPDES. Comments will also be submitted on the Town's behalf from Sheehan, Phinney, Bass & Green PA, as the Town is part of a MS4 Coalition. The granting of the two time extensions has been greatly appreciated so that we might better review and consider the ramifications of becoming a new MS4 Community under the 2013 NPDES permit.

The Town of Wilton has been named as a New Permittee under the 2013 Draft MS4 NPDES permit which brings with it significant mandated expenses. Every aspect of the NOI plan and testing brings an added expense to the Town. The Town of Wilton had applied for a waiver in April, 2013 but was denied in May, 2013 due to fact that 40CFR 122.32 or CFR 123.35(d) does not allow for interpretation of the amount of urbanization in Census. According to data provided by the 2010 Census there are greater than 1,000 but fewer than 10,000 within the Urbanized Area. Water Quality Standards (WQS) as required by 40 CFR 124.35(d)(2)(iv) have not been reviewed and verified to determine any potential exceedance.

The determination/distinction had not been made as to whether the Municipality is causing or contributing to any violation. There are sections within the regulated area that might be excluded once they are mapped. These areas don't contain any municipal buildings. Drainage consists of cross culverts under the roadway where there are natural swales, and there is land higher in elevation contributing to the drainage that doesn't fall within the jurisdictional area. The New Hampshire Department of Transportation (NHDOT) Highway system also bisects the urbanized areas from the impaired surface waters. Thus they are a major contributor to the degradation of the water quality especially for Chlorides. The Town has absolutely no control over the amounts and types of deicing materials that the NHDOT uses.

Additionally, since runoff and drainage occur within a watershed and not just within the jurisdictional boundaries of a Town it is difficult controlling the flows from neighboring communities, who could also be contributing to the overall water quality impairments. Water Quality Improvements need to be done on a watershed basis and beginning at the head waters of the basin not just along the way. Could the regulations be changed so that each watershed be

assessed and all stakeholders within that system contribute a fair and equal share all along the way instead of forcing individual communities to assume full implementation and financial responsibility? This way each watershed could be assessed, prioritized and plans developed solving all of the issues along the entire way and not burdening just a few. If clean water is the final goal then this would seem to be a better approach. Prioritize watersheds first then achieve clean water right from the headwaters.

The Town of Wilton has a total population of only 3,677 people of which 1,197 is within the Regulated EPA area according to the 2010 Census. This is compared with the neighboring Town of Milford which has a total population of 15,115 of which 12,193 people are within the Regulated area. Wilton has only about one quarter the total population and one tenth the number of people within the regulation area that the Town of Milford has. The cost of maintaining the General Government between the two Towns is similar with The Town of Wilton having an appropriation of 4.2 million dollars compared to the Town of Milford's of 15.5 million dollars or about 27%. In order to comply with the 2013 Draft the Town of Wilton will need to increase the operating budget in the order of \$750,000 to \$1,000,00 over the next 5 years. This equates to roughly \$200,000 per year which is about a 5% increase in the operating budget; that is cost prohibitive.

This permit is an unfunded mandate as defined in Article 28-a of the State's Constitution, Bill of Rights, adopted on November 28, 1984 states, *"The State shall not mandate or assign any new expanded or modified programs or responsibilities by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision."*

Sewer and water are specifically included in Section 541-A:25 Unfunded State Mandates II of the Administrative Procedures Act State. *Such programs also include, but are not limited to, functions such as police, fire and rescue, roads and bridges, solid waste, sewer and water, and construction and maintenance of buildings and other municipal facilities or other facilities or functions undertaken by a political subdivision."*

The 2013 Draft Permit will require the Town of Wilton to quickly come up to speed with the permit even though most of the Towns have been involved since 2003 thus putting a further financial burden on the already strapped, limited, Town finances. Under section 1.10.3 New Permittees are given some additional time extensions however upon closer review most the 6 control items only add an additional year to the time limits while still bringing the Town into total compliance with all of the other Towns who have been in the program for 10 or more years. The various extensions are as follows:

1. Public Education requirements in Part 2.3.2.1.b shall be extended one year; however this does not eliminate the need to have 2 messages to each of the four audiences for a total of 8 within the permit period. This only allows for the messages to begin in the second year but still requires the same number of messages within the same time frame. Reducing the total messages to each group to one or having a total of 4 for the permit period would be better in reducing the burden versus only extending the time by a year.
2. Outfall Inventory under Part 2.3.4.7 shall be completed within 2 years of the permit effective date. This section requires not only an inventory of the outfall but also the interconnection discharging from within the MS4. The timeframe required for a previously designated MS4 Town is one year from the permit effective

date, thereby only giving the new Towns only one extra year putting the burden within the second year. Wouldn't it be more prudent to have this done concurrently with the Outfall Mapping, extending the time frame to within 5 years of the effective date?

3. The Outfall Mapping under Part 2.3.4.6 shall be completed within 4 years of the permit effective date. The best available mapping shall be included with its SWMP until the new mapping is completed. Again the existing communities have to have this provided within a 2 year time frame so this gives any new Town only an additional 2 years but it still must be completed within 4 years of the permit effective date. This is an expensive part of this program for each Town and providing an extra year stating that the Outfall Mapping must be done within 5 years of the permit effective date would be more productive for the New Permittees.
4. All other IDDE Program timelines such as program development, monitoring and IDDE Program Implementation Goals and Milestones under Part 2.3.4 shall be extended by 2 years. Under Part 2.3.4.2 Elimination of Illicit Discharges shall be eliminated within 30 days. If the 2 years were to apply to this section then the time frame also falls within the second year. Section 2.3.4.6 allows the existing MS4 Towns 2 years from the effective date of the permit plus the additional 2 year extension allowed will put the effective date of mapping within 4 years of the permit effective date.

Under Part 2.3.4.8 Illicit Discharge Detection and Elimination Program the plan must be set up within one year or within 3 years for those new Permittees. This plan will provide the Permittee with adequate legal authority, it will identify IDDE Program Responsibilities, Assess and Prioritize rankings of Catchments into different categories and rank each on screening factors and update the plan yearly. This plan also requires Outfall and Interconnection Screening and Sampling to be done during various times of the year and must be setup within 3 years of obtaining the permit even though the mapping won't have to be done until within 4 years. It would be more beneficial to allow time to inventory the system and to coincide this with the prioritizing of Outfall Inventory and Outfall Mapping.

This section also continues on with sections 2.3.4.9 IDDE Program Implementation Goals and Milestones and 2.3.4.10 Indicators of IDDE Program Progress along with 2.3.4.11 employee training requirements. All of the parts under 2.3.4 are extremely comprehensive and will take a lot of time, planning, implementing all of which will require funding resources.

5. The ordinances, by-laws or other regulatory mechanisms required by Parts 2.3.4, 2.3.5 and 2.3.6 shall be completed as soon as possible but no later than 3 years from the effective date of the permit. Presently the Town of Wilton has Construction Site Stormwater Regulations in place; however, these along with all of the other required ordinances and regulations will have to be updated and put into place. This takes time since each one of these has to be prepared and placed before the voters, who ultimately make the decision. If they were to turn any one of these down then it would take another whole year before anything could be passed.
6. Part 2.2.2 Discharge to an Impaired Water without an Approved TMDL has a 2 year extension for a new permittee. Therefore Phase I shall be completed within 3 years, Phase 2 shall be within 5 years and Phase 3

shall be done within 7 years from the effective date of the permit. This extension doesn't apply to Parts 2.1.1.c or 2.2.2.c.i which shall be completed within the first 3 years after the effective date of the permit.

The timeframe for Part 2.2.2 doesn't seem practical for the far reaching extent of the water quality issues in southern NH. This permit appears to lead toward an immediate non-compliance issue. Time needs to be given to study, sample and determine what TMDL needs to be considered. Then plan, permit, prioritize, fund and construct many of the structural BMP's which will ultimately be required. The Town of Wilton has many outfalls along the Souhegan River to deal with. Addressing all of them at once would not be financially feasible. Much of the water quality data at this point is dated and in some cases there is insufficient data. The sampling techniques along with time of year and weather conditions during sampling are unknown and can greatly affect the testing results. Considering that this program will cost the Town Wilton at least many hundreds of thousands of dollars if not over a million in the next 5 years it would be prudent to make sure that there all of the data is current and correct prior to putting time, money and efforts into something that might not even exist at this time. Could a partnership be set up with NHDES to make sure all testing was done by specific regulated standards allowing for a better data set?

General Comments and Requests:

If the TMDL data was to be verified and prioritized within the first five years it would help to ensure that our limited funds are used appropriately in the most cost effective manner to achieve the successful mitigation measures that are being requested. After the first five years, once a priority list has been established then the highest prioritized outlet can be dealt with first, then subsequent outfalls could be addressed in the years following without driving the Town into financial ruin. Even with the extension to 7 years from the effective date of the permit, the Town of Wilton still has to come into compliance with all of other aspects of the law which doesn't seem practical.

It would appear from laying out this time line, that as a first time permittee, the Town of Wilton will need to catch up to and be on the same footing as all of the other much larger Towns by the end of the permitting process in 5 years. We will be required to File the NOI, create the Stormwater Management Program (SWMP), document Endangered Species, and Historic properties, broaden Public Education and Outreach, List all discharges, map the entire separate Storm Sewer System all the way back to the Town maintained buildings, create Water Quality Response Plans (WQRP), achieve compliance and create an Illicit Discharge Detection and Elimination Program (IDDE) to name just a few. We will then have to meet Water Quality Standards, under Phase 1 to Evaluate and identify MS4 discharges and under Phase 2 to Implement BMP's with the finalized source identified and assessed. It appears that for the first time permittee the final phase of the WQRP, plans to assess the implemented BMP's can come after the first 5 years of the effective date of the plan.

The Town of Wilton is a small rural community that would appreciate having a greater time extension to be able to come into compliance with the Clean Water Act. Even with the time extensions allowed under Part 1.10.3, the Town will be brought up to date with all of the other communities within the 5 year time constraint. Please compare this with the fact that the larger Towns have had 10 years to get all of the base information into place and we are starting from ground zero. Not only will we be dealing with the new 2013 regulations but the Town will be required to develop and implement all of the previous plans required of the larger Towns.

We all agree that we want clean water, we need clean water and it is of the utmost importance. How can we achieve a balance between our responsibility to clean the water and our financial situation? One solution might be to grant a realistic time frame to implement and then to track the progress of the BMPs. Five years is too short a time frame to be able to make the important determinations that are now being asked of us. Please allow us to fully evaluate the system properly, identifying the high target areas, implementing a realistic plan and then allow us ample time to determine if the BMP is working before we declare that we need to do more. We will do our part as required, however if the requirements can be spread out over a longer period of time such as focusing on data verification for the first five years and then implementing and testing for the next 15 years for a total of 20 years then we can all achieve our common goal of clean water while spreading costs out over a greater period of time.

Adding the cost of hundreds of thousands of dollars to a small rural community operating budget that is already stretched thin, struggling to keep our operating costs down to the bare bones while trying to deal with an aging infrastructure will be more than our population and our wallets can handle. Our population has already seen a decline due to the present economy; to continue on this path will mean the loss of even more people due to the ever rising property tax. If the Town, NHDES and the EPA were to work together to modify the regulations, we could then work towards compliance in a practical, realistic and cost effective manner. It has taken generations to impair the waters of the State, how can we be expected to clean it all in 5 short years with limited resources?

Sincerely, 
Daniel E. Donovan III, Chairman, Board of Selectmen

Copy: Vicki Quiram, Assistant Commissioner, NHDES
Jeff Andrews, NHDES